IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 259 of 1988

The Commissioner of Income Tax ... Applicant.

vs.

Jaya Hind Industries Ltd., ... Respondent

Mr. Ashok Kotangale for Applicant.
Mr. B. Vaidya i/b. S.N. Inamdar for Respondent.

CORAM:V.C.DAGA AND A. S. AGUIAR JJ.

Date: 4th July, 2005.

P. C.:

1. The questions of law referred to this court for opinion under section 256(1) of the Income-tax Act, by the Tribunal at the instance of the assessee are as follows:

1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to a deduction of Rs.5,00,000/- and Rs.4,25,000/- for Assessment Years 1978-79 and 1979-80 being the contribution made by the assessee to a

welfare trust?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions sec. 40(c) are attracted in respect of remuneration and perquisites of the Managing Director of the assessee company, leading to allowance of Rs.12,539/- for Assessment Year 1978-79 and Rs.9,102/- for Assessment Year 1979-80?

2. So far as the first question as to whether the assessee is entitled to a deduction of Rs.5,00,000/- and Rs.4,25,000/- for Assessment Years 1978-79 and 1979-80 being the voluntary payment made by the assessee to a welfare trust, on the ground of commercial expediency would be an allowable deduction under section 37 as held in the judgment of the Division Bench of this court in the case of **Commissioner of Income Tax vs. B.G.Shirke & Co., reported in [2003] 127 TAX,AM 245 (BOM.)**. Accordingly following this judgment, the first question is answered in the affirmative, in favour of the assessee and against the Revenue.

3. So far as the second question is concerned the same is covered by **Commissioner of Income Tax vs. Hico Products Pvt. Ltd. [1993]**

201 ITR page 567. Following the same ratio we hold that the provisions sec. 40(c) are attracted in respect of remuneration and perquisites of the Managing Director of the assessee company. The above question is thus answered in favour of the assessee and against the Revenue.

(V. C. DAGA J.)

(A. S. AGUIAR J.)

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